

SENATE BILL No. 548

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-1.1-24-5; IC 6-8.1-8-3.

Synopsis: Use of auctioneer for tax sales. Requires a licensed auctioneer to conduct the sale of real property for delinquent property taxes or under a tax warrant.

Effective: July 1, 2005.

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January 20, 2005, read first time and referred to Committee on Governmental Affairs and Interstate Cooperation.

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Introduced

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

SENATE BILL No. 548

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 6-1.1-24-5 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) When a tract or
3 an item of real property is subject to sale under this chapter, it must be
4 sold in compliance with this section.
5 (b) The sale must:
6 (1) be held at the times and place stated in the notice of sale; and
7 (2) except as provided in section 5.5 of this chapter, not extend
8 beyond October 31 of the year of sale.
9 (c) A tract or an item of real property may not be sold under this
10 chapter to collect:
11 (1) delinquent personal property taxes; or
12 (2) taxes or special assessments which are chargeable to other real
13 property.
14 (d) A tract or an item of real property may not be sold under this
15 chapter if all the delinquent taxes, penalties, and special assessments
16 on the tract or an item of real property and the amount prescribed by
17 section 2(a)(3)(D) of this chapter, reflecting the costs incurred by the

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county due to the sale, are paid before the time of sale.

(e) The county treasurer shall **contract with an auctioneer licensed under IC 25-6.1** to sell the tract or real property, subject to the right of redemption, to the highest bidder at public auction. However, a tract or an item of real property may not be sold for an amount which is less than the sum of:

(1) the delinquent taxes and special assessments on each tract or item of real property;

(2) the taxes and special assessments on each tract or item of real property that are due and payable in the year of the sale, regardless of whether the taxes and special assessments are delinquent;

(3) all penalties which are due on the delinquencies;

(4) the amount prescribed by section 2(a)(3)(D) of this chapter, reflecting the costs incurred by the county due to the sale;

(5) any unpaid costs which are due under section 2(b) of this chapter from a prior tax sale; and

(6) other reasonable expenses of collection, including title search expenses, uniform commercial code expenses, and reasonable attorney's fees incurred by the date of the sale.

(f) For purposes of the sale, it is not necessary for the county treasurer to first attempt to collect the real property taxes or special assessments out of the personal property of the owner of the tract or real property.

(g) The county auditor shall serve as the clerk of the sale.

(h) The expenses of conducting the sale by an auctioneer are considered an actual cost of the sale incurred by the county that is directly attributable to the tax sale under section 2(a)(3)(D) of this chapter.

SECTION 2. IC 6-8.1-8-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) The county sheriff of a county shall attempt to levy on and collect a judgment arising from a tax warrant in that county for a period of one hundred twenty (120) days from the date the judgment lien is entered, unless the sheriff is relieved of that duty at an earlier time by the department. The sheriff's authority to collect the warrant exists only while the sheriff holds the tax warrant, and if the sheriff surrenders the warrant to the department for any reason, the sheriff's authority to collect that tax warrant ceases. During the period that the sheriff has the duty to collect a tax warrant, the sheriff shall collect from the person owing the tax, an amount equal to the amount of the judgment lien plus the accrued interest to the date of the payment. Subject to subsection (b), the sheriff

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shall make the collection by garnisheeing the person's wages and by levying on and selling any interest in property or rights in any chose in action that the person has in the county. The Indiana laws which provide relief for debtors by exempting certain property from levy by creditors do not apply to levy and sale proceedings for judgments arising from tax warrants.

(b) A sheriff shall sell property to satisfy a tax warrant in a manner that is reasonably likely to bring the highest net proceeds from the sale after deducting the expenses of the offer to sell and sale. A sheriff:

(1) may engage an auctioneer; **and**

(2) if the property to be sold is real property, shall engage an auctioneer;

to advertise a sale and to conduct a public auction, unless the person being levied files an objection with the clerk of the circuit or superior court having the tax warrant within five (5) days of the day that the sheriff informs the person of the person's right to object. The advertising conducted by the auctioneer is in addition to any other notice required by law, and shall include a detailed description of the property to be sold. When an auctioneer is engaged under this subsection and the auctioneer files a verified claim with the clerk of the circuit or superior court with whom the tax warrant is filed, the sheriff may pay the reasonable fee and reasonable expenses of the auctioneer from the gross proceeds of the sale before other expenses and the judgment arising from the tax warrant are paid. As used in this section, "auctioneer" means an auctioneer licensed under IC 25-6.1.

(c) The sheriff shall deposit all amounts that the sheriff collects under this section, including partial payments, into a special trust account for judgments collected that arose from tax warrants. On or before the fifth day of each month, the sheriff shall disburse the money in the tax warrant judgment lien trust account in the following order:

(1) The sheriff shall pay the department the part of the collections that represents taxes, interest, and penalties.

(2) The sheriff shall pay the county treasurer and the clerk of the circuit or superior court the part of the collections that represents their assessed costs.

(3) Except as provided in subdivision (4), the sheriff shall keep the part of the collections that represents the ten percent (10%) collection fee added under section 2(b) of this chapter.

(4) If the sheriff has entered a salary contract under IC 36-2-13-2.5, the sheriff shall deposit in the county general fund the part of the collections that represents the ten percent (10%) collection fee added under section 2(b) of this chapter.

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1 The department shall establish the procedure for the disbursement of
2 partial payments so that the intent of this section is carried out.

3 (d) After the period described in subsection (a) has passed, the
4 sheriff shall return the tax warrant to the department. However, if at the
5 end of this period the sheriff is in the process of collecting the
6 judgment arising from a tax warrant in periodic payments of sufficient
7 size that the judgment will be fully paid within one (1) year after the
8 date the judgment was filed, the sheriff may keep the tax warrant and
9 continue collections. When the tax warrant is returned, the department
10 may exercise its collection powers alone, or it may allow the sheriff to
11 continue collections in conjunction with the department. If the
12 department and the sheriff engage in simultaneous collection efforts,
13 the sheriff may retain for disbursement under subsection (c) only the
14 part of the ten percent (10%) collection fee that is applicable to the part
15 of the collections for which the sheriff is responsible. The department
16 shall retain the rest of the collection fee.

17 (e) Notwithstanding any other provision of this chapter, the
18 department may order a sheriff to return a tax warrant at any time, if the
19 department feels that action is necessary to protect the interests of the
20 state.

21 (f) This subsection applies only to the sheriff of a county having a
22 consolidated city or a second class city. In such a county, the ten
23 percent (10%) collection fee added under section 2(b) of this chapter
24 shall be divided as follows:

25 (1) The sheriff may retain for disbursement under subsection (c)
26 forty thousand dollars (\$40,000), plus one-fifth (1/5) of any fees
27 exceeding that forty thousand dollar (\$40,000) amount.

28 (2) Two-fifths (2/5) of any fees exceeding that forty thousand
29 dollar (\$40,000) amount shall be deposited in the sheriff's
30 department's pension trust fund.

31 (3) Two-fifths (2/5) of any fees exceeding that forty thousand
32 dollar (\$40,000) amount shall be deposited in the county general
33 fund.

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